

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1530

SPONSOR: Finance and Taxation Committee, Regulated Industries Committee and Senator Sebesta

SUBJECT: Cosmetology

DATE: April 1, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
3.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill would permit persons who are not licensed to provide cosmetology services to provide makeup, special effects, or cosmetology services to an actor, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment as a “qualified production” as defined in s. 288.1254(2)(d), F.S. The bill also permits persons who are not licensed to provide makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent, or provide makeup or special effects services to the general public for no compensation.

The bill authorizes the Board of Cosmetology to adopt by rule restrictions established in regulations of the U.S. Food and Drug Administration. The bill would also prohibit the use or possession of products containing methyl methacrylate in a cosmetology salon, mobile cosmetology salon, specialty salon, or cosmetology school.

This bill substantially amends the following sections of the Florida Statutes: 477.0135, 477.016, and 477.0265.

This bill reenacts section 477.029, Florida Statutes.

II. Present Situation:

The Board of Cosmetology (board) within the Department of Business and Professional Regulation (department) is the agency charged with the regulation of cosmetology under chapter 477, F.S.

Section 477.012, F.S., expressly states that the Legislature deems it necessary to regulate the practice of cosmetology in the state, however, restrictions shall be imposed only to the extent necessary to protect the public from sufficient and discernible danger to health and not in a manner which will unreasonably affect the competitive market.

Section 477.014, F.S., provides that no person other than a duly licensed cosmetologist shall practice cosmetology or use the name or title of a cosmetologist.

“Cosmetology” is defined in s. 477.013, F.S., as:

[T]he mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.

Licensure of Cosmetologists

Section 477.019, F.S., requires that an applicant for licensure as a cosmetologist must be at least 16 years of age or have received a high school diploma, and must pay the required application fee. An applicant for licensure as a cosmetologist must satisfy an experience requirement or education requirement. The experience requirement consists of being authorized to practice cosmetology in another state or country for at least a year. The education requirement consists of receiving a minimum of 1,200 hours of training from a school of cosmetology licensed pursuant to chapter 1005, F.S., a cosmetology program within the public school system, the Cosmetology Division of the Florida School for the Deaf and the Blind, or a government-operated cosmetology program in this state.

An applicant for a cosmetology license is required to achieve a passing score on a licensure examination, which the applicant is qualified to take after completing a minimum of 1,000 actual school hours of the required training. The applicant may retake the examination once, but must complete the full requirements before taking the examination again.

Section 477.025, F.S., provides that no cosmetology salon or specialty salon shall operate without a license issued by the department. Section 477.0263(1), F.S., also requires that cosmetology services may only be performed in a licensed salon. However, s. 477.0263(2), F.S., provides an exception for cosmetology services performed by a licensed cosmetologist in a location other than a licensed salon, including, but not limited to, a nursing home, hospital, or residence, when the client for medical reasons is unable to go to a licensed salon.

Section 477.025, F.S., also exempts nursing homes and assisted living facilities licensed under parts II and III, respectively, of chapter 400, F.S., from the licensed salon requirement when a licensed cosmetologist provides salon services exclusively to facility residents.

Section 477.0263(3), F.S., also permits a person who holds a valid cosmetology license in any country, territory, or jurisdiction of the United States to perform cosmetology services in a location other than a licensed salon when the services are performed in connection with the

motion picture, fashion photography, theatrical, or television industry; a photography studio salon; a manufacturer trade show demonstration; or an educational seminar.

Under current law, a person not licensed in this state or in another state or jurisdiction may not perform cosmetology services during or in connection with a television, motion picture, or other entertainment production. The Office of Film and Entertainment within the Office of Tourism, Trade, and Economic Development has expressed the concern that this limitation has prevented some entertainment productions from coming to the state because some of the production's makeup and hair specialists were not licensed.

Section 477.0265, F.S., provides that it is unlawful for any person to:

- Engage in the practice of cosmetology or a specialty without an active license.
- Own, operate, maintain, open, establish, conduct, or have charge of a cosmetology salon or specialty salon:
 - Which is not licensed under the provisions of chapter 477; or
 - In which a person not licensed or registered as a cosmetologist or a specialist is permitted to perform cosmetology services or any specialty.
- Engage in willful or repeated violations of chapter 477 or of any rule adopted by the board.
- Permit an employed person to engage in the practice of cosmetology or of a specialty unless such person holds a valid, active license as a cosmetologist or registered as a specialists.
- Obtain or attempt to obtain a license or registration for money, other than the required fee, or any other thing of value or by fraudulent misrepresentation.
- Use or attempt to use a license to practice cosmetology or a registration to practice a specialty, which license or registration is suspended or revoked.
- Advertise or imply that skin care services or body wrapping, as performed under chapter 477, have any relationship to the practice of massage therapy, except those practices or activities defined in s. 477.013.

Section 477.029, F.S., provides penalties for violation of s. 455.227(1), F.S., (grounds for disciplinary action) s. 477.0265, F.S., (prohibited acts) and s. 477.028, F.S. (disciplinary proceedings)

Exceptions to Licensure

Section 477.0135, F.S., exempts certain persons from the provisions of chapter 477, F.S., when practicing pursuant to their professional or occupational responsibilities and duties. These persons include:

- Specified medical professionals.
- Persons practicing barbering.
- Persons employed in federal, state, or local institutions, hospitals, or military bases as cosmetologists.
- Persons whose practice is limited to the application of cosmetic products to another person in connection with the sale, or attempted sale, of such products at retail without compensation from such other person other than the regular retail price of such merchandise.

- Persons whose occupation or practice is confined solely to shampooing.
- Persons whose practice is confined to cutting, trimming, polishing, or cleansing of fingernails in a barbershop licensed under chapter 476, F.S.
- Persons under the employ of a photography studio salon while under the supervision of a licensed cosmetologist.

Makeup Artists in Film and Entertainment

According to the department, the industry advises that many of the special effects makeup artists do not hold a license in another state, country, territory, or jurisdiction of the United States, because these individuals learn their craft by on-the-job training and the traditional cosmetology and makeup training under the state licensing programs usually do not address special effects.

According to the department, many of the actors often request a specific makeup artist when working on a film or other entertainment-related industry product, and Florida is competing with other states for film and television projects. California, which according to the department is Florida's main competitor, currently has a licensing exemption for individuals providing barbering, cosmetology, or electrolysis services to individuals engaged in the entertainment industry. Illinois and Texas also have licensing exemptions.

Entertainment Industry Financial Incentive Program

Section 288.1254, F.S., creates an entertainment industry financial incentive program, subject to appropriation. The purpose of this incentive program is to pay financial incentives to qualified productions of filmed entertainment and digital-media-effects companies for expenditures made in Florida and to filmed entertainment projects that relocate to Florida from other states.

Section 288.1254(2)(d), F.S., defines a "qualified production" to mean:

...filmed entertainment that makes expenditures in this state for the total or partial production of a motion picture, made-for-television movie with a running time of 90 minutes or more, commercial, music video, industrial and educational film, television series pilot, or television episode. Productions that are deemed by the Office of Film and Entertainment to contain obscene content, as defined by the United States Supreme Court, shall not be considered qualified productions.

Section 288.1254, F.S., provides for an application process to be administered by the Governor's Office of Film and Entertainment (OFE), with oversight by the Office of Tourism, Trade, and Economic Development. It specifies eligibility requirements for qualified productions and projects, requires an annual report on the state's return on investment from these financial incentives, and provides that annual funding for the entertainment industry financial incentive program is subject to legislative appropriation.

There are two types of reimbursement incentives provided in s. 288.1254, F.S. The first is a reimbursement of up to 15 percent for qualifying expenditures in Florida for a qualified production that demonstrates a minimum of \$850,000 in total qualified expenditures. The second type of reimbursement provides a payment not to exceed five percent of annual gross revenues

on qualified expenditures before taxes or \$100,000, whichever is less, for a digital-media-effects company in the state that provides digital material to a qualified production certified by OFE.¹

Theme Park or Entertainment Complex

Section 509.013(9), F.S., defines “theme park or entertainment complex” to mean a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

Methyl Methacrylate

Methyl methacrylate (MMA) is an inexpensive adhesive that is used when applying acrylic nails. MMA is used in the manufacture of resins and plastics, e.g., Plexiglas. It is also used to make concrete water-repellent, as an additive to exterior latex house paint, floor polishes, and in the field of medicine and dentistry to make prosthetic devices and as a filler or cement.

In 1972 the U.S. Food and Drug Administration (FDA) deemed MMA to be a poisonous and deleterious ingredient when used as a liquid monomer. The FDA obtained a court-ordered injunction to prohibit a manufacturer from distributing MMA to the nail industry. However, the FDA has not banned or otherwise expressly limited by regulation the use of MMA as an adhesive for acrylic nails.

According to the department, MMA is distinguishable from other nail monomers because artificial nails affixed with an MMA monomer are extremely difficult to remove. Artificial nails affixed with an MMA monomer do not soak off in solvents designed to remove acrylic nails. The only way to remove such artificial nails is to file the nails off with a coarse abrasive, a time consuming process that may take up to an hour and which can leave the underlying nail brittle and damaged. Methyl methacrylate can cause serious skin reactions and permanent nail damage. An MMA nail bond could also cause serious damage. The bond is so rigid that a jammed or caught nail may fail to break and instead tear off the natural nail.

The U.S. Environmental Protection Agency does not consider MMA to be carcinogenic to humans. However, it does consider MMA as an irritant to skin, eyes, and mucous membranes. Exposure to MMA is also associated with respiratory and neurological symptoms.

Maryland is one of the first states to ban MMA. Maryland imposes a fine of \$1,000 per violation. Maryland requires the salon owner to bear the cost of lab testing products suspected to contain MMA without regard to whether there is a positive or negative test result. Ohio, New York, and Kentucky have enacted laws identical to Maryland’s. According to the department, most states that ban MMA experience a high rate of MMA cases in the beginning, but after about a year the cases decrease to approximately 4 to 5 a year.

Current Florida law does not ban or otherwise limit the use of MMA in the practice of cosmetology. The board supports the banning of MMA.

¹ See s. 288.1254(4)(a) and (b), F.S.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 477.0135, F.S., to create exceptions to the licensure requirement for cosmetologists. Subsection (5) adds an exception that permits unlicensed persons to provide makeup, special effects, or cosmetology services to an actor, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment as a “qualified production” as defined in s. 288.1254(2)(d), F.S.

The bill provides that these unlicensed cosmetology services are not required to be performed in a licensed salon. The bill would prohibit individuals subject to this exemption from providing services to the general public.

Subsection (6) adds an exception that permits persons who are not licensed to provide makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent, or provide makeup or special effects services to the general public for no compensation. The term “theme park or entertainment complex” has the same meaning as in s. 509.013(9).

Section 2. The bill amends s. 477.016, F.S., to authorize the board to adopt by rule restrictions established in regulations of the FDA that are related to the use of a cosmetic product or to any substance used in the practice of cosmetology. The board must make a finding that the product or substance poses a risk to the health, safety, and welfare of persons providing cosmetology services or clients.

Section 3. The bill amends s. 477.0265, F.S., to prohibit, in the practice of a cosmetology, the use or possession of any product containing a liquid nail monomer containing any trace of methyl methacrylate (MMA).

The bill does not prohibit the distribution or sale in this state of cosmetology products containing MMA, provided that the possession for sale or distribution of such product does not occur in the practice of cosmetology.

Section 4. The bill reenacts the penalty provision in s. 477.029(1)(h) and (2), F.S., for the purpose of incorporating the amendment to s. 477.0265, F.S., in section 3 of the bill.

Section 5. This act would take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the department, products containing MMA are inexpensive. Banning such products, may compel cosmetologists who currently use such products to buy a more expensive alternative product or products.

C. Government Sector Impact:

The department has advised that it anticipates that the cost of enforcement, including the laboratory testing of suspected MMA containing products, would be offset by fines and assessed prosecution and investigation costs collected from violators.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.